



PUBLIC NOTICE

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**FEDERAL COMMUNICATIONS COMMISSION RECEIVES PETITION FILED BY
AMERICAN CABLE ASSOCIATION FOR PARTIAL RECONSIDERATION OF THE
COMMISSION'S EMERGENCY ALERT SYSTEM FIFTH REPORT AND ORDER;
ANNOUNCES SCHEDULE FOR PLEADING CYCLE**

EB Docket No. 04-296

Oppositions/Comments Due: [15 days from date of Federal Register Publication]

Replies Due: [25 days from date of Federal Register Publication]

On April 23, 2012, the Federal Communication Commission (Commission) received a petition filed by the American Cable Association¹ (ACA) for partial reconsideration of that portion of the Commission's Emergency Alert System (EAS) *Fifth Report and Order*² "requiring operators of cable systems lacking physical ... broadband Internet connections to seek waivers under the Commission's standard procedures."³ ACA proposes that the Commission establish a streamlined waiver process for cable systems that serve less than 501 subscribers, subject to a showing of compliance with specified conditions, and that waivers obtained through this process last at least one year.⁴ By this Public Notice, the Commission establishes a pleading cycle for oppositions and replies in response to the petition as indicated above. In addition, the Commission invites comment on a number of specific questions related to the petition as described below.

Background

The *Fifth Report and Order* will require all EAS Participants to convert EAS messages formatted in the Common Alerting Protocol (CAP) into messages that comply with EAS Protocol requirements, and to monitor the Federal Emergency Management Agency's Integrated Public Alert and Warning System

¹ American Cable Association Petition for Reconsideration, EB Docket No. 04-296 (filed April 20, 2012) (ACA Petition).

² Review of the Emergency Alert System; Independent Spanish Broadcasters Association, the Office of Communication of the United Church of Christ, Inc., and the Minority Media and Telecommunications Council, Petition for Immediate Relief; Randy Gehman Petition for Rulemaking, EB Docket 04-296, *Fifth Report and Order*, 27 FCC Rcd 642 (2012) (*Fifth Report and Order*).

³ ACA Petition at 1. ACA's petition was timely filed. See 47 U.S.C. § 405; 47 C.F.R. § 1.429(d); 77 Fed. Reg. 16688-01 (Mar. 22, 2012).

⁴ ACA Petition at 1.

(IPAWS) for federal CAP-formatted alert messages using whatever interface technology is appropriate.⁵ The Commission noted that “the primary method of distributing CAP messages will be via a broadband Internet connection.”⁶ Accordingly, the Commission also decided in the *Fifth Report and Order* that “the physical unavailability of a broadband Internet service offers a presumption in favor of a waiver.”⁷ The Commission noted that this presumption would primarily benefit smaller EAS Participants, for whom obtaining CAP capable EAS equipment would be a relatively larger financial commitment.⁸ However, the Commission also determined that such a waiver “likely would not exceed six months,” with an option of renewal, given that broadband Internet access “may become available at some point after a waiver has been granted, and that alternate means of distributing CAP alert messages, such as satellite delivery, may also become available.”⁹

In its Petition, ACA argues that the Commission’s foregoing presumption would “not provide meaningful relief for ... small operators” due to the “need to devote significant administrative resources to preparing waiver requests.”¹⁰ ACA argues that to ameliorate this concern the Commission should implement a streamlined waiver process for systems serving fewer than 501 subscribers, requiring a “waiver request certification ... signed by a company representative or officer responsible for its truthfulness, [which] should include the following: ...

- A statement that the cable operator currently does not have physical access to a wireline broadband connection at the system head-end.
- A statement that obtaining physical access to a wireline broadband connection would require costs in excess of a provider’s normal installation drop fee (i.e. special construction costs or line extension fees).”¹¹

ACA argues that “[w]aivers granted pursuant to this process should be granted for at least a period of one year, with renewal years available, or until the operator: (i) obtains broadband Internet service at the system headend; or (ii) can obtain broadband Internet service without incurring additional construction or set-up fees, such as line extension charges.”¹²

Discussion

We seek comment on ACA’s Petition. We also seek comment on several specific issues. First, we note that the Commission’s *Fifth Report and Order* nowhere states that a *wireline* broadband connection is necessary to comply with the Commission’s requirement that EAS Participants be able to

⁵ *Fifth Report and Order* at ¶ 4.

⁶ *Id.* at ¶ 152.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ ACA Petition at 4.

¹¹ *Id.* at 7.

¹² *Id.* at 8.

receive CAP-formatted alerts by June 30, 2012.¹³ Accordingly, we seek comment whether any presumption in favor of granting a waiver based on lack of physical access to broadband should be limited to an EAS Participant's lack of physical access to a wireline broadband connection, as ACA requests. Stated differently, would an EAS Participant's physical access to, for example, a wireless or satellite broadband connection provide sufficient bandwidth for purposes of complying with the relevant requirements of the *Fifth Report and Order*?

We also seek comment on ACA's suggestion that the Commission should, at least in part, consider the costs to EAS Participants of obtaining broadband Internet access service when assessing whether to grant waiver relief. If so, how should the Commission weigh such cost in this assessment? For example, ACA requests that the Commission waive CAP compliance for cable systems serving fewer than 501 subscribers if the cost of broadband access is "in excess of a provider's normal installation drop fee (i.e. special construction costs or line extension fees)."¹⁴ Is this the proper criterion for such an assessment? If not, what specific costs should the Commission consider to make such an assessment? Should such an assessment be dependent on the financial condition of the petitioner? If so, what standard should we use for assessing whether a waiver is warranted based on financial condition? How much and what kind of information about a petitioner's financial condition should be submitted in support of a waiver request? Should information as to where the waiver applicant is in its EAS equipment replacement cycle be a factor in the Commission's analysis?¹⁵ Should factual statements in the waiver request be certified by a corporate officer, rather than some other representative? Does the proposed one-year period for waivers, terminable once broadband access becomes available without "additional construction or set-up fees,"¹⁶ adequately address the Commission's concerns about changing circumstances? Would a six-month reporting condition, attesting to the continuing compliance with the original conditions, be a better way of addressing those concerns without adding unnecessary costs?

Finally, in its petition, ACA proposes that those filing a waiver certification include "[a]n affirmation that the operator understands it must continue to operate its legacy EAS equipment."¹⁷ Is this criterion sufficient to ensure that subscribers remain able to receive timely and accurate EAS alerts? Should the Commission, for example, require that the waiver certification include an affirmation that the cable operator continues to operate legacy EAS equipment that is capable of receiving and transmitting the Emergency Action Notification?

Procedural Matters

Interested parties may file oppositions and other comments and reply comments on or before the dates indicated on the first page of this document. All pleadings must reference EB Docket No. 04-296. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

¹³ See Review of the Emergency Alert System; Independent Spanish Broadcasters Association, The Office of Communication of the United Church of Christ, Inc., and the Minority Media and Telecommunications Council, Petition for Immediate Relief, ET Docket No. 04-296, *Fourth Report and Order*, 26 FCC Rcd 13710 (2011).

¹⁴ ACA Petition at 7.

¹⁵ See *Fifth Report and Order* at ¶ 153.

¹⁶ ACA Petition at 8.

¹⁷ *Id.* at 7.

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (tty).

Address all filings to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Room TW-A325, Washington, DC 20554. Parties should also send a copy of their filings to Gregory Cooke, Policy and Licensing Division, Public Safety and Homeland Security Bureau, Federal Communications Commission, Room 7-A744, 445 12th Street, SW, Washington, DC 20554, or by e-mail to Gregory.Cooke@fcc.gov. Parties shall also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC 20554, (202) 488-5300, or via e-mail to fcc@bcpiweb.com.

Documents in EB Docket No. 04-296 are available for public inspection and copying during business hours at the FCC Reference Information Center, Portals II, 445 12th St. SW, Room CY-A257, Washington, D.C. 20554. The documents are available for purchase from BCPI, telephone (202) 488-5300, facsimile (202) 488-5563, TTY (202) 488-5562, e-mail fcc@bcpiweb.com. These documents are also available for viewing on the Commission's website at <http://www.fcc.gov/cgb/ecfs>.

This matter is subject to the "permit-but-disclose" provisions of the Commission's *ex parte* rules.¹⁸ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or

¹⁸ 47 C.F.R. §§ 1.1200 *et seq.*

otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

For further information, contact Gregory Cooke, Associate Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau at (202) 418-2351 (voice), or via e-mail at Gregory.Cooke@fcc.gov.

By the Acting Chief, Public Safety and Homeland Security Bureau.

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